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IN THE

Supreme Court of the United States

DUANE EDWARD BUCK,

Petitioner,

v.

LORIE DAVIS, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that the Constitution applies as robustly as its text and history require and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Before a Texas jury may sentence a person to death in lieu of life imprisonment, it must conclude beyond a reasonable doubt that "there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society." Tex. Code Crim. Proc. Ann. art. 37.071 § (2)(b)(1), (2)(c). At Duane Buck's sentencing hearing, his own counsel offered "expert" testimony that Buck was more likely to commit future violence because he is black. Pet. App. B, at 2-3. By informing the jury, under a veneer of scientific respectability, that Buck was more likely to be violent because he is

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[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

African American, this testimony inserted into the proceedings an enduring racial stereotype that exerts a unique power in this nation and invited the jury to sentence Buck to death based on racial stereotypes and prejudices—even though the Constitution plainly forbids this. Because the Fifth Circuit ignored the singular power of this racial stereotype, as well as the prejudicial effect it was likely to have, its judgment should be reversed.

Texas's rule that no one may be sentenced to death absent a finding that he or she is likely to commit violence in the future is designed to "circumscribe the class of persons eligible for the death penalty," *Zant v. Stephens*, 462 U.S. 862, 878 (1983), and avoid placing "standardless sentencing power in the jury." *Woodson v. North Carolina*, 428 U.S. 280, 302 (1976) (plurality opinion). By providing "objective standards" for the jury's decision, requirements like this one seek to give the jury members discretion while also ensuring that defendants are not treated as "members of a faceless, undifferentiated mass" but rather "as uniquely individual human beings." *Id.* at 303-04. Thus, "[w]hat is important at the [death] selection stage is an *individualized* determination on the basis of the character of the individual and the circumstances of the crime." *Zant*, 462 U.S. at 879; *see also Jurek v. Texas*, 428 U.S. 262, 273-74 (1976) (plurality opinion) ("the Texas capital-sentencing procedure guides and focuses the jury's objective consideration of the particularized circumstances of the individual offense and the individual offender before it can impose a sentence of death").

That individualized determination was compromised in this case by the testimony elicited by Buck's own counsel—later reemphasized by the prosecutor—that Buck was more likely to commit future violence

because he is black. Pet. App. B, at 2 (testimony that Buck was more likely to be violent because "'black people[] are over represented in the Criminal Justice System'" (quoting trial transcript)). Buck's black skin, the jury was told, is one of the "'statistical factors we know to predict future dangerousness.'" *Buck v. Thaler*, 132 S. Ct. 32, 35 (2011) (Sotomayor, J., dissenting from denial of certiorari) (quoting trial transcript).

The endorsement of this false stereotype by Dr. Walter Quijano, a psychologist retained by Buck's counsel and "stamped with the trial court's imprimatur as an expert," Pet. at 30, poisoned a hearing that was meant to focus on the unique facts of the case—unique facts that notably suggested Buck was unlikely to commit violence in prison. For example, the jury was presented with testimony that although Buck "suffered from dependent personality disorder . . . characterized by an unhealthy reluctance to let go of past relationships, even to the point of violent or destructive behavior," the fact that he "would be unable to develop similar dependent relationships in jail" meant he "was unlikely to commit future acts of violence." *Buck v. Thaler*, 345 F. App'x 923, 925 (5th Cir. 2009); Pet. App. D, at 4-5 (summarizing testimony of Drs. Lawrence and Quijano). Jurors also learned that Buck had "'no assaultive incidents either at TDC or in jail,'" and that this was "'a good sign that this person is controllable within a jail or prison setting.'" *Buck*, 132 S. Ct. at 35 (Sotomayor, J., dissenting from denial of certiorari) (quoting trial transcript).

By informing the jury, however, that Buck was more likely to be violent because he is African American, Dr. Quijano's testimony injected into the hearing a uniquely powerful racial stereotype. Indeed, the

depiction of African Americans as intrinsically violent is among the most persistent and well-known racial stereotypes in American society. Deeply entrenched in the nation's culture, the image of the dangerous black male has been reflected for generations in political discourse, scientific theorizing, and popular entertainment, all of which—sometimes explicitly, sometimes subtly—have portrayed black men as primitive, animalistic, dangerous, and criminal. And far from waning over time, the image of the violent black male has only become more prominent in recent decades, its infamy reaching new heights during the 1990s, when Buck was sentenced.

More than simply a persistent cultural motif, the stereotype of the violent black male has a demonstrable effect on perceptions and judgments, as documented by an array of social science research employing a variety of methods. Studies repeatedly find that perceptions of African American men are influenced significantly, and sometimes unconsciously, by the widespread stereotype that they are intrinsically violent—and that this phenomenon can affect judgments about their likelihood of future crime and the appropriateness of particular punishments. Whether the matter involves recalling the details of a scene, gauging the aggressiveness of ambiguous behavior, assessing the risk of danger in a given location, judging the extent to which a crime was attributable to the offender's inherent disposition, or evaluating the appropriate sanction, research consistently reveals that a latent association between African Americans and violence distorts perceptions of reality and leads to racially biased assessments.

The Constitution, however, plainly forbids these racial stereotypes from affecting the administration of justice. The Framers of our nation's enduring

charter inscribed in the original Bill of Rights the right to an "impartial" jury, *see* U.S. Const. amend. VI, capable of rendering decisions based only on the evidence presented in court and not on preconceived biases about the parties. This fundamental right, together with the Fourteenth Amendment's guarantee of equal protection of the laws, has long been understood to prohibit all racial prejudice and bias in the administration of justice, including in jury deliberations. Indeed, in the aftermath of the Civil War, as it became clear that racial biases were infecting jury deliberations with "[a]ll-white juries punish[ing] black defendants particularly harshly, while simultaneously refusing to punish violence by whites . . . against blacks and Republicans," James Forman, Jr., *Juries and Race in the Nineteenth Century*, 113 Yale L.J. 895, 909-10 (2004), Congress passed two pieces of legislation designed to guard against racial prejudices infecting Southern juries, *id.* at 923, 926, 930. Throughout the debates over these pieces of legislation, the bills' proponents made clear that racial bias in jury decision-making was intolerable, running afoul of both the Sixth and Fourteenth Amendments.

The Fifth Circuit ignored the singular power of the racial stereotype invoked in Buck's sentencing, as well as the extent to which such "expert" testimony was likely to prejudice the jurors, giving them license to sentence Buck on the basis of precisely the sorts of racial prejudices that the Constitution prohibits. Shrugging off Buck's claim of ineffective assistance of counsel, the Court of Appeals simply deemed it "unremarkable as far as IAC claims go" without further explanation. Pet. App. B, at 9. Thus, in denying Buck a certificate of appealability, the court below failed to reckon with, or even acknowledge, the pow-

erful sway that the stereotype of the violent black male continues to wield in American society.

In short, the endorsement of a uniquely pernicious racial stereotype during Buck's capital sentencing proceedings, particularly when combined with the other remarkable facts of his case, *see* Pet'r's Br. at 3-4, is precisely the sort of "extraordinary circumstance" that makes relief appropriate under Rule 60(b)(6) of the Federal Rules of Civil Procedure. And because the issue presently before the Court is simply whether Buck should have been granted a certificate of appealability on that issue, Buck need only show that these questions are debatable, *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). They plainly are, and the judgment of the Fifth Circuit should therefore be reversed.

ARGUMENT

I. THE DEPICTION OF BLACK MEN AS INHERENTLY VIOLENT IS AN ENDURING RACIAL STEREOTYPE THAT EXERTS A UNIQUE POWER IN THIS NATION

A. The Stereotype of the Violent Black Male is Deeply Entrenched in American History and Culture

Throughout our nation's history, people of African descent have been portrayed as intrinsically primitive, animalistic, dangerous, and criminal. The stereotype of the violent black male, in particular, has long permeated American society.

From the beginning of colonial-era contact between Africans and the English, "the African's different culture—for Englishmen, his 'savagery'—operated to make Negroes seem to Englishmen a radically different kind of men" and "somehow to place

[them] among the beasts." Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550–1812*, at 28 (1968); Richard Ligon, *A True & Exact History of the Island of Barbados* 46-47 (1657) (describing Africans as "a bloody people" and declaring that "most of them . . . are as neer beasts as may be, setting their souls aside"). In Buffon's influential eighteenth-century work *Histoire Naturelle*, a chapter describing the orangutan calls Negroes "almost equally wild, and as ugly as these apes." Count de Buffon, *The Natural History of Quadrupeds* 248 (1830 ed.). Such vile assessments found "justification" in the nascent European science of biological taxonomy, in which differences among human races were regarded as differences among species. Carl Linnaeus himself distinguished "*Homo sapiens afer* (the African black)" from "*Homo sapiens europaeus*," describing the former as "ruled by caprice" and the latter as "ruled by customs." Stephen Jay Gould, *The Mismeasure of Man* 35 (1981).

The "savage" nature of Africans, moreover, "took on an immediate and practical importance" in light of "the problem of slave control." Jordan, *supra*, at 232. In the antebellum United States, proslavery propaganda contrasted "the savage Negro of Africa and the 'civilized' black slave." George M. Frederickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817–1914*, at 53 (1987 ed.). "According to this theory, the Negro was by nature a savage brute. Under slavery, however, he was 'domesticated' or, to a limited degree, 'civilized.' . . . . [R]emove or weaken the authority of the master," however, "and he would revert to type as a bloodthirsty savage." *Id.* at 53-54; *see id.* at 54-55 ("The notion that bestial savagery constituted the basic Negro character and that the loyal 'Sambo' fig-

ure was a social product of slavery . . . suggest[ed] a program of preventive action . . . . As a slave he was lovable, but as a freedman he would be a monster."). This concept "was . . . one of the most important contributions made by Southern proslavery propagandists to the racist imagery that outlasted slavery." *Id.* at 53.

After the Civil War, "a great fear of black insurrection and revenge seized many minds," C. Vann Woodward, *The Strange Career of Jim Crow* 23 (3d rev. ed. 1974), leading to a "striking . . . difference in attitude toward the Negro." Thomas F. Gossett, *Race: The History of an Idea in America* 261 (1997 ed.). The "lofty strain" of antebellum stereotype that had portrayed the African American as "loyal, devoted, willing to be led, childlike," was steadily supplanted by "an undisguised hatred of the Negro which portray[ed] him as little if any better than a beast." *Id.* at 261-62.

The efforts of Southern political leaders to promote this savage image "were deeply influenced by social Darwinism and the ideology of white supremacy." Aline Helg, *Black Men, Racial Stereotyping, and Violence in the U.S. South and Cuba at the Turn of the Century*, 42 Comp. Stud. Soc'y & Hist. 576, 579 (2000). Darwin's work, in the hands of his followers, "provided a new rationale within which nearly all the old convictions about race superiority and inferiority could find a place." Gossett, *supra*, at 145. Cloaking these convictions in a scientific lexicon, moreover, expanded their appeal beyond Southern partisans. "For many educated Americans who shunned the stigma of racial prejudice, science became an instrument which 'verified' the presumptive inferiority of the Negro and rationalized the politics of disenfranchisement and segregation into a social-scientific termi-

nology that satisfied the troubled conscience of the middle class." John S. Haller, Jr., *Outcasts from Evolution: Scientific Attitudes of Racial Inferiority, 1859–1900*, at xiv (1971); *see* Frederick L. Hoffman, *Race Traits and Tendencies of the American Negro* 218-28 (1896) (citing arrest and conviction rates revealing a "disproportionate number of colored criminals" as proof of "the specific criminal tendencies of the colored race").

Portrayals of blacks as violent and primitive also flourished in popular culture. Blackface minstrel performance, arguably "the most popular form of public entertainment in the nineteenth century," stressed "the primitiveness and irresponsibility of African-American men." Gerald R. Butters, Jr., *Black Manhood on the Silent Screen* 8 (2002). "As white men in blackface . . . minstrels could sing, dance, speak, move, and act in ways that were considered inappropriate for white men." *Id.* at 10. Minstrelsy thus offered "the use of the black body as an excuse for expressing 'baser' urges proper white society disallowed." Stephanie Dunson, *Black Misrepresentation in Nineteenth-Century Sheet Music Illustration*, *in Beyond Blackface: African Americans and the Creation of American Popular Culture* 45, 48 (W. Fitzhugh Brundage ed., 2011). A predominant character type in later minstrelsy was Zip Coon, "a post–Civil War Negro . . . who moved to the city and attempted to assimilate into white culture, usually with laughable results. . . . Eager to get a dollar without any work, Zip Coon was always on the make. He carried a switchblade" and, more than the plantation-based Sambo character, had "dangerous vices that were threatening to whites." Butters, *supra*, at 12.

"The minstrel stage provided many nineteenth-century Americans with their only impression of

black culture, and it was from the minstrel stage that black stereotypes would [later] enter into advertising, film, radio, and television." Angela M. Nelson, *African American Stereotypes in Prime-Time Television: An Overview, 1948–2007*, *in* 1 *African Americans and Popular Culture* 185, 187 (Todd Boyd ed., 2008). Dissemination of these stereotypes was abetted by "rapid development of mass communications, photography, and written media," Helg, *supra*, at 579, enabling "[a]dvertising postcards, songbooks, porcelains, piano sheet music, vaudeville, and literature" to perpetuate racist images. Butters, *supra*, at 21. Through these media, "[t]he dominant southern ideology of black inferiority became the popular national perception," *id.* at 3, and "stereotyped representations of blackness" were placed "at the center of commercial popular culture." Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890–1940*, at 154 (1998).

For example, popular song at the turn of the century offered up portraits of violent, criminal blacks. In these songs, the "Zip Coon" persona "was converted from a primitive natural philosopher" who lampooned black pretentions "into a primitive brute." Jon W. Finson, *The Voices That Are Gone: Themes in Nineteenth-Century American Popular Song* 227 (1994). In "De Coon Dat Had De Razor," for instance, a fight erupts between two men at a ball, "where dem coons all carry razors," in which one man attacking another "cut[s] his ear clear off his head." *Id.* Illustrated on the song's sheet-music cover is a scowling, wide-eyed black man, in dandified urban clothing, holding an oversized razor while townspeople and a police officer flee. *See* Wm. F. Quown, *De Coon Dat Had De Razor* (White, Smith & Co. 1885), *available at* Libr. of Cong., *Image 1 of De Coon Dat Had De Ra-*

zor, https://www.loc.gov/resource/ihas.100007421.0/?sp=1. This "violent picture of African-Americans in late-nineteenth-century music" was replicated in many other "'homicidal' coon songs" that dwelled on "the image of the violent African American demon." Finson, *supra*, at 229, 232-33. And as these songs perpetuated racial stereotypes of "violence, lust, and irresponsibility," the "growing influence of popular music in the national marketplace helped standardize the stereotypical profile of black Americans." Susan Curtis, *Black Creativity and Black Stereotype*, *in Beyond Blackface*, *supra*, at 124, 137.

As political leaders in the South rolled back the progress made by African Americans during Reconstruction, an even harsher and more fear-inducing stereotype gained new prominence in popular discourse: the "black beast rapist." Hale, *supra*, at 233. During the last quarter of the nineteenth century, this image "began to dominate whites' representations of black men in the South." Helg, *supra*, at 578. "The Southern stereotype of the black rapist built on narratives of supposed African savagery, sexual license, and polygamy to claim that without the restraining effect of slavery, blacks would regress toward their natural bestiality." *Id.* (quotation marks omitted).

"'[T]o the ignorant and brutal young Negro,'" wrote Thomas Nelson Page in 1904, social equality "'signifies but one thing: the opportunity to enjoy, equally with white men, the privilege of cohabiting with white women.'" Gossett, *supra*, at 273. Such views led future U.S. senator Rebecca Felton to declare in 1897 that "if it takes lynching to protect women's dearest possession from drunken, ravenous beasts, then I say lynch a thousand a week if it becomes necessary." Hale, *supra*, at 108-09. Virginia

historian Phillip Alexander Bruce wrote that black men's desire for white women "moves them to gratify their lust at any cost," and with a "malignant atrocity" that has "no reflection in the whole extent of the natural history of the most bestial and ferocious animals." Phillip Alexander Bruce, *The Plantation Negro as a Freeman* 83, 84 (1889). Thus, "the icon of the black rapist transformed all blacks into outcasts and singled out the alleged barbarism and animal sexuality of the entire male population of African descent." Helg, *supra*, at 583.

With the advent of motion pictures, the Southern image of the violent black rapist found its way to a nationwide audience. Early films featuring blackface actors reproduced stereotypes that "were already popularized in American life and arts." Donald Bogle, *Coons, Mulattoes, Mammies, and Bucks: An Interpretive History of Blacks in American Films* 4 (4th ed. 2001). These films typically emphasized "the 'uncivilized' behavior of African Americans," with common tropes including the frenzied consumption of watermelon ("a strong visual symbol of the 'appetites' of black men" that caused them to "revert to primitiveness," Butters, *supra*, at 21-22), fighting with razors and guns, *id.* at 50, and chicken thievery, *id.* at 24-25, 28 ("Such cinematic depictions . . . documented the Radical southern position that black men were naturally driven to criminality.").

Then, in 1915, D.W. Griffith's epic *The Birth of a Nation* placed the stereotype of "the brutal black buck" center stage in indelible fashion. Bogle, *supra*, at 10. Griffith's film was a landmark, its technical achievement and grand scope transforming the film industry and making it one of the most profitable movies of all time. *Id.* at 16. Set during Reconstruction, as Northern interlopers have "unleash[ed] the

sadism and bestiality innate in the negro, turning the once congenial darkies into renegades," the film portrays its white protagonists terrorized by violent black men, with the ascension of the Ku Klux Klan ultimately bringing redemption. *See id.* at 11-14. Griffith's film was peppered with "barbaric black[s] out to raise havoc . . . . nameless characters setting out on a rampage full of black rage." *Id.* at 13. And in its portrayal of two key villains, who each menace white females at dramatic high points, the film's truly "archetypal figure" emerges—the "black bucks . . . oversexed and savage, violent and frenzied as they lust for white flesh." *Id.* at 13-14. "[P]lay[ing] hard on the bestiality of his black villainous bucks," Griffith's film attributed their desire for white women "to an animalism innate in the Negro male." *Id.* at 14.

The unremitting racism of *The Birth of a Nation*, together with the film's unprecedented popularity (it was the first to receive a White House screening), incited protests, and the controversy prevented African Americans from again receiving such vitriolic attention in films. But instead of replacing old stereotypes with more authentic depictions, Hollywood simply purged African Americans from the screen or relegated them to the margins, where their portrayal continued to be defined by typecasting. *See* Bogle, *supra*, at 10, 15-16; Butters, *supra*, at 83-84. The same was true in other media. By 1950, a news article decrying the portrayal of African Americans in advertising lamented the endurance of belittling clichés from the previous century: "Negroes may never be depicted in national ads in any but standard stereotypes. They can be used as 'Uncle Toms' or 'Aunt Jemimas,' or as wild savages, comic buffoons or grinning redcaps." *Reveal Jim Crow Policy in U.S.*

Advertising; 'Menial' Negroes Only Are Shown in Ads, April 1950, *quoted in* Linda G. Tucker, *Lockstep and Dance: Images of Black Men in Popular Culture* 68 (2007).

The stereotype of the brutal black male only increased in prominence as the twentieth century drew to a close. Indeed, during the 1980s and 1990s, "the typification of crime as a black male threat . . . achieved iconic proportions." Ted Chiricos et al., *Perceived Racial and Ethnic Composition of Neighborhood and Perceived Risk of Crime*, 48 Soc. Probs. 322, 322 (2001). Concerns about the drug trade and the lethality of inner-city violence fostered a dramatic spike in news coverage of crime. Combined with "a spate of new 'reality-based' cop shows, rescue programs, and tabloid offerings," this trend exposed Americans, "albeit vicariously, to more crime and violence than ever before." Douglas S. Massey, *Getting Away with Murder: Segregation and Violent Crime in Urban America*, 143 U. Pa. L. Rev. 1203, 1204-05 (1995). Thus, although nationwide crime rates were actually decreasing, many Americans nonetheless came to believe that they were "living through an unprecedented boom in violent crime," and "the people they [saw] committing increasingly lethal crimes [were] predominantly young, male, and black." *Id.*

Local television news, in particular, has been singled out by scholars for "depict[ing] life in America as pervaded by violence and danger" and for "heighten[ing] Whites' tendency to link these threats to Blacks." Robert M. Entman, *The Black Image in the White Mind: Media and Race in America* 78 (2000). One study found that local newscasts in twenty-nine cities were "pervaded with threatening images of minority crime suspects—many shown in police mug

shots, others bound in handcuffs closely guarded by police." Christopher P. Campbell, *Race, Myth and the News* 69 (1995). An examination of one city's local news broadcasting found that it "presented Blacks in physical custody more than twice as much as Whites," that "stories about Blacks were four times more likely to include mug shots," that whites were "more likely to receive helpful pro-defense soundbites," and that the programs "were more likely to provide an on-screen name for Whites accused of violence than for Blacks." Entman, *supra*, at 82-83, 85; *see id.* (explaining that the absence of such names "tends to efface the differences among individual Blacks"). Similar studies found African Americans "over-represented as perpetrators of crime in comparison to arrest records, [while] whites were underrepresented as perpetrators but were overrepresented as victims." Mary Beth Oliver, *African American Men as 'Criminal and Dangerous': Implications of Media Portrayals of Crime on the 'Criminalization' of African American Men*, 7 J. Afr. Am. Stud. 3, 6-7 (2003).

At the same time, menacing images of violent black men flourished in popular media, as the "proliferation of stereotyped, criminal characterizations of African American men bolster[ed] the marketing of consumer products" that exploited this image—such as black "gangsta" images featured "in the marketing of products such as malt liquor, compact disks, clothing, soft drinks, television programs, feature films, and home security systems." Randolph G. Potts, *The Social Construction and Social Marketing of the "Dangerous Black Man,"* 2 J. Afr. Am. Men 11, 12-13 (1997); *see* David Samuels, *The Rap on Rap*, New Republic, Nov. 11, 1991 (noting that "the more rappers were packaged as violent black criminals, the bigger

their white audiences became"); Tucker, *supra*, at 13 (discussing "the return of the black brute in the spectacular and audible form of the black male rapper").

By the 1990s, in short, there was "a widespread belief that black people, and particularly young black inner-city males, [were] far more prone to violence than white people." Evan Stark, *The Myth of Black Violence*, 38 Soc. Work 485, 485 (1993). Black Americans, as one commentator noted, had become "the repository for the American fear of crime." Katheryn Russell-Brown, *The Color of Crime: Racial Hoaxes, White Fear, Black Protectionism, Police Harassment, and Other Macroaggressions* xiii (1998).

This ascension of fears about black male violence took place alongside a revival of biological theories about inherent inequalities among the races. *See, e.g.*, Richard Herrnstein & Charles Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (1994). Meanwhile, high-profile incidents made unmistakably clear the lingering connections that many made between African Americans and animalistic brutality. *See* Potts, *supra*, at 16 (recounting a 1992 controversy after the director of the National Institute of Mental Health "likened the violence of inner-city youth to the behavior of 'hyperaggressive,' 'hypersexual' male monkeys in the jungle"); Stark, *supra*, at 488 (noting that the young men accused of raping the Central Park jogger were characterized in the media "as 'animals,' 'dark creatures of the night,' a 'wilding wolf pack,' and the like"); S. Plous & Tyrone Williams, *Racial Stereotypes From the Days of American Slavery: A Continuing Legacy*, J. Applied Soc. Psychol. 795, 812 (1995) (describing reports that a Los Angeles police officer involved in the Rodney King beating "earlier that day referred to a domestic

dispute between blacks as 'right out of *Gorillas in the Mist*'").

In sum, generations of political discourse, scientific conjecture, and popular entertainment have depicted African American men as primitive, animalistic, dangerous, and criminal—perpetuating the stereotype of the violent black male. As the next Section discusses, this stereotype continues to have a distorting effect on perceptions and judgments today, as demonstrated by an array of social science research employing a variety of methods.

B. The Stereotype of the Violent Black Male Has a Demonstrable Effect on Perceptions and Judgments

Stereotypes are understood by psychologists as "'cognitive structures that contain the perceiver's knowledge, beliefs, and expectations about human groups,'" which, "like any other kind of cognitive generalization, tend to put their imprint on data in the very process of acquiring it." Mark Peffley et al., *Racial Stereotypes and Whites' Political Views of Blacks in the Context of Welfare and Crime*, 41 Am. J. Pol. Sci. 30, 31 (1997) (quoting David L. Hamilton & Tina K. Trolier, *Stereotypes and Stereotyping: An Overview of the Cognitive Approach* 127, 133, *in Prejudice, Discrimination, and Racism* (John F. Dovidio & Samuel L. Gaertner eds., 1986)). In the United States, "[a]lmost all Americans are aware of the prevalent stereotypes of the major racial groups." Lincoln Quillian, *Does Unconscious Racism Exist?*, 71 Soc. Psychol. Q. 6, 8 (2008). "Researchers have documented people's explicit knowledge of the societal stereotypes about Blacks in particular," who are "construed as violent, threatening, criminal, unintelligent, uneducated, lazy, poor, athletic, and musical." Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge,*

Historical Dehumanization, and Contemporary Consequences, 94 J. Personality & Soc. Psychol. 292, 294 (2008) (citing studies); *see id.* at 301 (reporting that "94% of present respondents . . . indicated being aware of the stereotype that Blacks are violent").

Racial stereotypes exert a powerful influence on perception and judgments even in the absence of animus, bigotry, or the endorsement of discriminatory views. That is, individuals need not harbor ill will or consciously subscribe to racist attitudes in order for their impressions to be affected by entrenched racial stereotypes. An influential body of research "has shown that even those who espouse the ideal of color blindness tend to associate whites with mostly positive traits and African Americans . . . with mostly negative traits," and that "these deep associations can affect our thoughts and actions without conscious awareness." Quillian, *supra*, at 7. Biases thus "may be unknown even to the person who holds them," Raj Andrew Ghoshal et al., *Beyond Bigotry: Teaching about Unconscious Prejudice*, 41 Teaching Soc. 130, 132 (2012), and "some research indicates that dominant cultural stereotypes affect even members of stereotyped groups." Lincoln Quillian & Devah Pager, *Estimating Risk: Stereotype Amplification and the Perceived Risk of Criminal Victimization*, 73 Soc. Psychol. Q. 79, 84 (2010). "[R]esearch has shown that discrimination is most likely to occur when nonracial justifications . . . are available," enabling individuals to preserve "their self-concept as nonprejudiced persons." Thomas E. Ford, *Effects of Stereotypical Television Portrayals of African-Americans on Person Perception*, 60 Soc. Psychol. Q. 266, 272 (1997).

"The stereotype of Black Americans as violent and criminal has been documented by social psychologists for almost 60 years." Jennifer L. Eber-

hardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. Personality & Soc. Psychol. 876, 876 (2004). "Research consistently finds that Americans hold strong associations between race and crime, and appear especially fearful about the risk of crime in the presence of black strangers." Quillian & Pager, *supra*, at 82.

> Researchers have highlighted the robustness and frequency of this stereotypic association by demonstrating its effects on numerous outcome variables, including people's memory for who was holding a deadly razor in a subway scene, people's evaluation of ambiguously aggressive behavior, people's decision to categorize nonweapons as weapons, the speed at which people decide to shoot someone holding a weapon, and the probability that they will shoot at all.

Eberhardt et al., *supra*, at 876 (internal citations omitted); *see* Lisa A. Harrison & Cynthia Willis Esqueda, *Race Stereotypes and Perceptions about Black Males Involved in Interpersonal Violence*, 5 J. Afr. Am. Men 81, 82 (2001) (citing studies showing that "behaviors by black males that are perceptually vague and ambiguous are more likely to be perceived as threatening than similar behaviors performed by their white counterparts"); Quillian, *supra*, at 7-8 (citing studies with same result).

One set of studies used "a diverse assortment of methods and procedures" to examine the unconscious association of blacks with crime. Eberhardt et al., *supra*, at 878. Its results demonstrated that subliminally exposing people to black male faces, instead of white male faces, increases the speed with which they subsequently recognize images of "crime-relevant ob-

jects," such as guns and knives, as the focus of those images is slowly increased. *Id.* at 878-81. Conversely, it found that exposing people to crime-relevant objects subsequently "prompts them to visually attend to Black male faces" more than white male faces, suggesting "[n]ot only are Blacks thought of as criminal, but also crime is thought of as Black." *Id.* at 878, 881-83. These studies further discovered that subliminally activating the concept of "crime" in the minds of participating police officers "increase[d] the likelihood that they [would] misremember a Black face as more stereotypically Black than it actually was." *Id.* at 878, 885-88.[2]

These results mirror other research indicating a pervasive association between African Americans and crime. Multiple studies, for instance, show that "perceived risk of criminal victimization is elevated by the perception that blacks live in one's neighborhood," independent of the actual local crime rate—illustrating the use of "a kind of a shorthand equation between blackness and crime." Chiricos et al., *supra*, at 334-35; *see* Quillian & Pager, *supra*, at 95, 97-98 (reporting that whites "appear to systematically downplay" other available information in favor of "placing great emphasis on racial composition as their primary guide to assessing risk").

Other research illustrates that latent stereotypes about black men are more likely to produce discriminatory results in situations where details presented

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[2] Similar methods reveal that the historical association of African Americans with apes, like the association with crime, continues to influence perceptions unconsciously. Among other findings, subliminally activating the concept of "apes" increases the degree to which participants condone police violence depicted in a video—but only where the suspect is understood to be black. Goff et al., *supra*, at 294, 301-02.

are consistent with the stereotype. One such study asked participants to assess the legitimacy of a police search described in a narrative, while providing different participants with variations on the scenario by manipulating both the race of the suspect and his personal attributes. "When responding to scenarios of blacks who confirm . . . their negative expectations . . . respondents consistently display a discriminatory double standard, such that they offer far more harsh judgments of blacks than of similarly described whites." Peffley et al., *supra*, at 52; *see id.* at 48-55.

Still other research indicates that racial biases can influence judgments about whether a violent act was more attributable to circumstances or to an offender's inherent disposition. Participants in one study read a narrative "that depicted violent acts committed by a man who had just learned that his 5-year engagement was terminated by his fiancé because she had a new boyfriend." James D. Johnson et al., *Race, Media, and Violence: Differential Racial Effects of Exposure to Violent News Stories*, 19 Basic & Applied Soc. Psychol. 81, 82 (1997). They then "answered a question that measured their attributions of the defendant's violent behavior (i.e., situational versus dispositional)." *Id.* Participants whose information about the defendant included a photo of a black man were more likely to attribute his behavior to inherent disposition than were participants who received a photograph of a white man, or no photograph at all. *Id.* at 84-86.

The evidence that racial stereotypes influence appraisals of dangerousness extends beyond laboratory research. One study examined juvenile delinquency proceedings to investigate whether "officials perceive minorities as more likely than white youths to commit future crimes." George S. Bridges & Sara

Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, 63 Am. Soc. Rev. 554, 556 (1998). Among other things, the study concluded that "probation officers consistently portray black youths differently than white youths in their written court reports, more frequently attributing blacks' delinquency to negative attitudinal and personality traits." *Id.* at 567. Those attributions "shape assessments of the threat of future crime." *Id.*

With respect to capital proceedings, researchers have sought to explain why "studies continue to demonstrate that jurors' death sentencing behavior is significantly affected by the race of the defendant." Mona Lynch & Craig Haney, *Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the "Empathic Divide,"* 45 Law & Soc'y Rev. 69, 70 (2011). One method employed to investigate this disparity involves simulated sentencing hearings in which test participants serve as jurors. This method sacrifices a degree of realism for "greater control over extraneous variables, so that *only* the race of the defendant . . . can be systematically varied." *Id.* at 77. It also enables the use of questionnaires in which participants evaluate the evidence presented. *Id.* at 81-82. Such studies have found not only that black defendants are more likely to be sentenced to death, *id.* at 76-77, but also that this disparity "appears to be explained by the way the jurors differentially assessed the penalty-phase evidence." *Id.* at 88. In one study, white male jurors "were significantly more likely to agree that the black defendant liked to harm others . . . and that he was violent by nature." *Id.* at 91. These participants saw the black defendant as "more cold-hearted" and as "someone who would be

more likely to re-offend if given the chance." *Id.* at 91-92.

In sum, research consistently finds that perceptions of African American men are influenced significantly, and sometimes unconsciously, by the widespread stereotype that they are intrinsically violent—and that this phenomenon can affect judgments about their likelihood of future crime and the appropriateness of particular punishments.

II. THE SIXTH AND FOURTEENTH AMENDMENTS TOGETHER REFLECT A COMMITMENT TO RACE-BLIND JURY DECISION-MAKING

While racial stereotypes have long been prevalent in American culture, our Constitution reflects a commitment to eradicating such stereotypes from the administration of justice and ensuring that jury proceedings are free of racial bias and prejudice.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI. Strongly rooted in the English common law, 4 William Blackstone, *Commentaries on the Laws of England* *350 (jury is a "sacred bulwark" of liberty), this jury guarantee was of paramount importance to the Framers, who viewed it as a central feature of a system of ordered liberty. *See* Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* 96-97 (1998); *see also* 2 Joseph Story, *Commentaries on the Constitution of the United States* 558 (5th ed. 1891) (describing the jury as "the great bulwark of [our] civil and political liberties").

As the Amendment's text makes clear, critical to the Framers' conception of a jury was the belief that its members should be impartial, that is, free of bias toward or against any of the parties. At common law, this proscription was typically used to prohibit jurors from serving if they were related to one of the parties or had some other interest in the case. *See* 3 Blackstone, *supra*, at *363. But the Amendment's assurance of an impartial jury, together with the Fourteenth Amendment's guarantee of equal protection of the laws, also prohibits jurors from acting on the basis of a bias toward or against any of the parties because of their race.

The original meaning of the Fourteenth Amendment's equal protection guarantee "establishes equality before the law, and it gives to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty." Cong. Globe, 39th Cong., 1st Sess. 2766 (1866) (statement of Sen. Jacob Howard). The Framers of the Amendment were particularly concerned about racial discrimination in the administration of criminal justice, and wrote the equal protection guarantee to prevent "different degrees of punishment" from being "inflicted, not on account of the magnitude of the crime, but according to the color of the skin." *Id.* at 2459 (statement of Rep. Stevens). The Framers decreed that "[w]hatever law punishes a white man for a crime shall punish the black man precisely in the same way," *id.*, doing away "with the injustice of subjecting one caste of persons to a code not applicable to another" and "prohibit[ing] the hanging of a black man for a crime for which the white man is not to be hanged." *Id.* at 2766.

In the aftermath of the Civil War, Southern states turned a blind eye to the daily "acts of cruelty, oppression and murder," *see Report of the Joint Committee on Reconstruction, at the First Session Thirty-Ninth Congress* xvii (1866), that Southern whites perpetrated to terrify and intimidate the newly freed slaves and their allies. A key aspect of the problem was juror bias. Witnesses told the Joint Committee on Reconstruction that "since the surrender and coming home of the rebels, there is less chance for getting a jury who will act justly." *Report of the Joint Committee on Reconstruction* pt. 2, *supra*, at 33. Indeed, "[a]ll-white juries punished black defendants particularly harshly, while simultaneously refusing to punish violence by whites . . . against blacks and Republicans." Forman, *supra*, at 909-10.

Over the course of Reconstruction, the Framers of the Reconstruction Amendments repeatedly acted to ensure the existence of impartial juries that would fairly apply the law to all regardless of race. Action first came in the form of the Civil Rights (Ku Klux Klan) Act of 1871, ch. 22, 17 Stat. 13 (codified as amended in scattered sections of 10, 18, 28, and 42 U.S.C.). Although the "principal targets" of the Act were "the Klan itself and the violence it perpetuated," proponents of the legislation recognized that a principal reason why Klan members were able to wage terror with impunity "was the failure of Southern juries to punish violence against blacks and Republicans." Forman, *supra*, at 920-21; *see, e.g.*, Cong. Globe, 42d Cong. 1st Sess. 158 (1871) (Judge Settle of the North Carolina Supreme Court explaining that "[t]he defect lies not so much with the courts as with the juries").

The Civil Rights Act of 1871 produced marked successes, Forman, *supra*, at 925, but it was not the only legislation introduced to address the problem of

Southern juries that were infected by racial bias. In 1870, Senator Charles Sumner of Massachusetts introduced legislation to "prohibit[] discrimination in the selection of jurors and provid[e] penalties for officials who disobeyed." Forman, *supra*, at 926; *see id.* at n.160 ("no person shall be disqualified for service as juror in any court, national or State, by reason of race, color, or previous condition of servitude" (quoting S. 916, 41st Cong. § 4 (1870))).

In supporting the legislation, senators recognized that black Americans could not enjoy equality under the law if they were tried by all-white juries that were prejudiced against them. For example, Senator Oliver Morton of Indiana noted "the prejudices against the colored race entertained by the white race, even in some of the Northern States and certainly in all of the Southern States" and asked whether "the colored man enjoys the equal protection of the laws, if the jury that is to try him for a crime or determine his right to property must be made up exclusively of the white race?" 3 Cong. Rec. 1793 (1875) (statement of Sen. Morton).

Other members of Congress also spoke about the difficulties in securing justice for black defendants, saying, "Every colored man tried as a criminal appears before a jury who are inclined to believe him guilty because of his race . . . ." 2 Cong. Rec. 427 (1874) (statement of Rep. Stowell). One Senator invoked Justice Strong who in 1874 spoke from the bench about the inability of black Americans to receive a fair trial: "It is also well known that in many quarters prejudices existed against the colored race, which naturally affected the administration of justice in the State courts, and operated harshly when one of that race was a party accused." 2 Cong. Rec. 4148

(1874) (statement of Sen. Howe) (quoting *Blyew v. United States*, 80 U.S. 581, 593 (1871)).

During debates over Senator Sumner's bill, black Americans living in the South advised members of Congress that "it is almost if not quite impossible for a black man to obtain justice" in Southern courts. Message from the President of the United States, Transmitting a Memorial of a Convention of Colored Citizens Assembled in the City of Montgomery, Ala. on December 2, 1874, H. Exec. Doc. No. 46, at 4-5 (1874). They explained that

> from . . . the antipathies and prejudices of race, which are generally inflamed by artful and sometimes by undisguised appeals by counsel to these passions, it results that our race is deprived of their constitutional right under the constitution of the State to a trial by an 'impartial jury,' and of our right under the 13th and 14th amendments to the Constitution of the United States 'to the equal protection of the laws.'

Id. at 5.

The day before the Senate passed Senator Sumner's bill, which became the Civil Rights Act of 1875, Senator Morton gave a rousing speech in which he captured the spirit of the legislation. In response to an opponent of the bill, Senator Morton asked

> whether the colored men . . . have the equal protection of the laws when the control of their right to life, liberty, and property is placed exclusively in the hands of another race of men, hostile to them, in many respects prejudiced against them, men who have been edu-

> cated and taught to believe that colored men have no civil and political rights that white men are bound to respect.

3 Cong. Rec. 1795 (1875) (statement of Sen. Morton).

As this history indicates, the Sixth Amendment right to an "impartial" jury, together with the Fourteenth Amendment's guarantee of equal protection, has long been understood to require juries whose decisions are free of racial prejudice and bias.

III. THE ENDORSEMENT OF A UNIQUELY POWERFUL RACIAL STEREOTYPE DURING A CAPITAL SENTENCING HEARING IS AN "EXTRAORDINARY CIRCUMSTANCE" JUSTIFYING RELIEF UNDER RULE 60(B)(6)

Reflecting our nation's deep constitutional commitment to impartial juries and equal protection of the laws, this Court's decisions have long acknowledged that racial bias has no place in the criminal justice system. *See, e.g.*, *Rose v. Mitchell*, 443 U.S. 545, 555 (1979) (plurality opinion) ("Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice."); *see also Amici* Brief of the Hon. Mark L. Early et al. 4-7; *Amicus* Brief of Constitutional Accountability Center at 18-23, *Peña Rodriguez v. Colorado*, No. 15-606 (U.S. June 30, 2016).

This Court has further recognized that, "[b]ecause of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected." *Turner v. Murray*, 476 U.S. 28, 35 (1986) (plurality opinion). Numerous factors enhance this risk. "Key elements of the death penalty decision . . . are inherently subjective assessments whose

parameters are both unfamiliar and emotionally wrought," and "[r]esearch suggests that racial animus may be more readily mobilized and acted upon in a setting where decisionmaking norms are so ambiguous." Lynch & Haney, *supra*, at 74. The risk is further elevated where a black defendant's crime appears to confirm the ubiquitous stereotype about his race's violent nature. Even without the encouragement of an expert witness endorsing that stereotype, individuals "offer far more harsh judgments of blacks than of similarly described whites" when those blacks have shown traits that confirm negative stereotypical expectations. Peffley et al., *supra*, at 52; *see* Lynch & Haney, *supra*, at 74.

As explained earlier, the racial stereotype invoked at Buck's sentencing hearing is deeply entrenched in American culture and continues to distort perceptions and judgments today. The archetype of the violent black male, in other words, inevitably shapes the lens through which jurors in a case like this one strive to assess the facts in order to decide questions of character and propensity. Against this backdrop, Dr. Quijano's testimony was distinctly prejudicial: not only did it dredge to the surface a powerful, latent racial stereotype, it gave jurors a license—indeed, an obligation—to consider it as they resolved the key question at Buck's sentencing hearing, that is, his likelihood of future violence.

Jurors could assume that Dr. Quijano, an expert witness whose testimony was admitted by the court, had "a reliable basis in the knowledge and experience of his discipline," *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592 (1993), for his assertion that race is one of the "'statistical factors we know to predict future dangerousness,'" *Buck*, 132 S. Ct. at 35

(Sotomayor, J., dissenting from denial of certiorari) (quoting trial transcript), and his agreement that "'the race factor, black, increases [Buck's] future dangerousness.'" Pet. App. B, at 3 (quoting trial transcript). Dr. Quijano thus provided jurors with a means of relying on an age-old racial stereotype while maintaining a sense that their assessment of the evidence was untainted by bigotry. His testimony made it possible for jurors who did not want to think of themselves as prejudiced to nonetheless rely on invidious racial generalizations in making their sentencing decision. Put differently, in light of Dr. Quijano's testimony, it was only reasonable for jurors to suppose that considering Buck's race in their decision, and counting it as a portent of future dangerousness, represented a faithful discharge of their duty to weigh the evidence presented to them—not as an act at odds with the Constitution's commitment to the race-blind administration of justice. And by reemphasizing this aspect of Dr. Quijano's testimony on cross-examination, the prosecutor increased the chances that the jury would indeed weigh "the race factor" in its deliberations.

Supplying an ostensibly nondiscriminatory basis for considering Buck's race was especially problematic because, as studies have shown, "discrimination is most likely to occur when nonracial justifications . . . are available." Ford, *supra*, at 272; *see* Lynch & Haney, *supra*, at 72. For similar reasons, the measured phrasing of Dr. Quijano's testimony, and the prosecutor's questioning, may have been *more* pernicious in their effects than an inflammatory appeal to racial passions, which would have risked provoking a backlash among jurors who were striving to be even-handed. A purported expert's sober assertion that Buck's race statistically increased his dan-

gerousness, coupled with an expression of regret for this "'sad'" reality, Pet. App. B, at 2 (quoting trial transcript), enabled jurors to rely on a racial stereotype without "challeng[ing] their self-concept as non-prejudiced persons." Ford, *supra*, at 272.

Nor did the brevity of Dr. Quijano's comments on race render their impact "*de minimis*," as the district court concluded. Pet. App. D, at 10. As explained in Section I, the image of African Americans as intrinsically violent is among the most persistent and well-known stereotypes in American society—one that repeatedly has been at the center of highly polarizing political and social controversies. Invoking this stereotype, even briefly, inevitably calls to mind a plethora of emotionally charged images and sentiments. Where such a powerful racial stereotype is elicited by the defense, reemphasized by the prosecutor, and endorsed in a professional expert report made available for scrutiny—all with the approval of the court—its impact on the jury cannot be dismissed as the district court did, much less ignored entirely as the Fifth Circuit did.

To the contrary, because such open racial bias strikes at the integrity of the judicial system itself, it urgently calls for relief under Rule 60(b)(6), which "provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988) (quoting *Klapprott v. United States*, 335 U.S. 601, 614-15 (1949)); *see Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 233-34 (1995) (Rule 60(b) "reflects and confirms the courts' own inherent and discretionary power, 'firmly established in English practice long before the foundation of our Republic,' to set aside a judgment whose enforcement would

work inequity" (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944))).

Significantly, proper consideration of "justice" and "inequity" under Rule 60(b) reaches beyond the parties before the court to encompass the wider public interest. *See Liljeberg*, 486 U.S. at 864 (in granting Rule 60(b)(6) relief where a judge's impartiality was called into question, this Court explained that "it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process"). Indeed, respect for the finality of judgments, which generally counsels against their disturbance, itself "springs from the belief that in most instances society is best served by putting an end to litigation after a case has been tried and judgment entered." *Hazel-Atlas Glass Co.*, 322 U.S. at 244. Because the public interest in finality must be weighed against the public interest in ensuring the integrity of the nation's justice system, this Court has recognized that "[c]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged." *Sanders v. United States*, 373 U.S. 1, 8 (1963); *cf. Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005) (finality is a "policy consideration" that, "standing alone, is unpersuasive in the interpretation of a provision whose whole purpose is to make an exception to finality").

These considerations regarding the integrity of the nation's justice system are all the more compelling in the context of a capital sentencing hearing. "It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather

than caprice or emotion." *Zant*, 462 U.S. at 885 (quoting *Gardner v. Florida*, 430 U.S. 349, 358 (1977)). Such a momentous decision requires assessing "the characteristics of the person who committed the crime," *Gregg v. Georgia*, 428 U.S. 153, 197 (1976) (plurality opinion), because capital defendants must be treated not as "members of a faceless, undifferentiated mass" but rather "as uniquely individual human beings," *Woodson*, 428 U.S. at 303-04 (plurality opinion). That individualized assessment was compromised here, by an expert's endorsement of the long-standing stereotype that black men, as a group, are inherently violent.

For the Court to declare that endorsement of this powerful racial stereotype in a court of law—as jurors weighed the sentence of death—does not even debatably constitute an "extraordinary circumstance" would fundamentally damage the integrity of our nation's judicial system.

CONCLUSION

For the foregoing reasons, the judgment of the Fifth Circuit Court of Appeals should be reversed.

Respectfully submitted,

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